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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-483

THOMAS F. O'CALLAGHAN, as President, or CHARLES M. CROOKS, as Secretary-Treasurer, or WILLIAM M. CALDWELL, as Vice President, of INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO,

Petitioners-Cross Respondents,

against

LLOYD SHELDON, VICTOR SOTO, JAMES CLIFFORD, ARTHUR SOHNEN and JOHN HAYES, each of them individually and on behalf of all other members of INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, similarly situated,

Respondents-Cross Petitioners.

CROSS PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Section 101(a)(3), 29 U.S.C. § 411(a)(3) 3, 4, 7, 8

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Respondents-Cross Petitioners.

CROSS PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The plaintiffs below, members of defendant labor organization, pray that a writ of certiorari issue to review the order of the United States Court of Appeals for the Second Circuit entered in this case on May 28, 1974.

A petition for certiorari dated October 24, 1974 has been filed by defendant labor organization challenging reversal by the Court of Appeals of the District Court's decision,

which had dismissed the complaint herein.* The present cross-petition challenges the failure of the Court of Appeals to make such reversal on other and different grounds raised before it on appeal.

Opinions Below

The opinion of the Court of Appeals for the Second Circuit is reported at 497 F.2d 1276 and is set forth at pages 1a-15a of the Appendix to the defendant labor organization's petition for certiorari. The opinion of the District Court is unreported but is set forth at pages 17a-27a of the Appendix to defendant's petition.

Jurisdiction

The Order of the Court of Appeals was entered and dated May 28, 1974. A petition for rehearing was denied August 6, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Question Presented

Did the Courts below err in ruling that the labor organization's referendum on a dues increase and on other proposed constitutional amendments did not violate Section 101 of the Labor-Management Reporting and Disclosure Act of 1959 insofar as the various amendments were submitted to the voters together, as a single package, and voters were permitted only a single "Yes" or "No" vote on the package as a whole?

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* Cross-petitioners intend to file a brief in opposition to that Petition within the time allowed by the rules. This cross-petition is filed within the statutory ninety-day period commencing with the order of the Court below denying rehearing.

Statutes Involved

Section 101(a)(1) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 411, provides as follows:

> "Sec. 101 (a)(1) Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws."

Section 101(a)(3) of the LMRDA, 29 U.S.C. § 411(a)(3) provides as follows:

> "(3) Except in the case of a federation of national or international labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on the date of enactment of this Act shall not be increased, and no general or special assessment shall be levied upon such members, except—
>
> "(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or
>
> "(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization

held upon not less than thirty days' written notice to the principal office of each local or constitutent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and by-laws of such labor organization: *Provided,* That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization."

Statement

This is an action brought by union members challenging the manner in which defendant labor organization purported to adopt a "package" of many and various amendments to its constitution, one of which amendments was a dues increase.

From dismissal by the district court at the conclusion of plaintiffs' case, plaintiffs appealed to the Court of Appeals, arguing that for several reasons the manner in which the amendments were purportedly adopted infringed their federally-protected rights. The Court of Appeals for the Second Circuit rejected some of plaintiffs' arguments but upheld plaintiffs on another, ruling that the Union's refusal to permit members an opportunity to distribute literature opposing the package of constitutional amendments infringed their rights to a fair referendum. Accordingly, the Court of Appeals reversed and directed remand for further trial on the facts.

The Union has filed a petition for certiorari addressed to that ruling and reversal. On its motion, remand to the District Court has been stayed during the pendency of its

petition. The plaintiff members of the Union now cross-petition for certiorari, challenging the failure of the Court of Appeals to declare unlawful the Union's submission of a "package" of diverse constitutional amendments (including a dues increase) to a single Yes-or-No vote, by which means, plaintiffs argue, the Union denied members a meaningful vote on each of the diverse amendments.

If plaintiffs' argument on cross-petition be ultimately upheld, then no further trial is necessary, since the facts upon which the cross-petition is based are undisputed. The decision of the Court of Appeals, as it stands (and because of the different facts upon which it bases reversal), requires further trial in the District Court.

The facts material to this cross-petition, and to the issue raised in it, have been stipulated by the parties. The stipulation, which was made a part of the Pre-Trial Order and is in the record, contains the following provisions relevant to this cross-petition:

> "3. (a) The parties stipulated that the following facts are not in dispute in this action . . .
>
> (1) Defendant INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, AFL-CIO, is a labor organization within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, 29 USC 401, et seq.
>
> • • •
>
> (10) In or about January 1970, certain persons, members of defendant, prepared a certain document referred to herein as the 'new' constitution. . . .
>
> • • •
>
> (13) The proposed 'new' constitution contained and contains many and various proposed amendments to defendant's pre-existing constitution, changing defendant's organizational and dues structure in various ways and increasing the rates of dues payable by more than one-half of defendant's members.
>
> • • •

(25) A ballot containing spaces for 'YES' or 'No' votes to the proposed 'new' constitution was sent to each member of defendant. . . .

* * *

(27) The ballots sent to members as aforesaid called for them to vote 'YES' or 'No' to the proposed 'new' constitution as a single package. There was no way permitted by the form of the ballot or by the way in which the referendum was carried out for a member to vote for one or more of the constitutional amendments contained or implied in it and against others. Specifically, there was no way for a member to vote against the dues increase and for any of the various constitutional amendments contained in the proposed 'new' constitution.

* * *

(33) The referendum was conducted by mail, over a three-month period beginning in March 1970 and ending in June 1970. The announced result showed that the 'new' constitution was approved by a vote of 2,781 for and 2,602 against. . . ."

Reason for Granting the Writ

The decision of the Court of Appeals for the Second Circuit, insofar as it rejects plaintiffs' protest against a "package" procedure that requires members to cast a single "Yes" or "No" vote to an entire package of diverse constitutional amendments, including a dues increase, is in conflict with the decision of the Sixth Circuit Court of Appeals in *Sertic* v. *Cuyahoga, Lakes, Etc., Carpenters District Council*, 423 F.2d 515 (6th Cir. 1970).

In *Sertic, supra*, the Union had put to a vote of its members a proposition embracing two different though related issues. The proposition it put to a vote was the following: "Shall the District Council negotiate a new

3-year agreement with a wage increase of at least $1.00 per hour plus a 2% gross wage assessment?"

Two issues were thus embraced in the proposition: one was negotiation for a new contract with a wage increase of $1.00 or more; the other was negotiation for a wage assessment. Both were items in the same collective negotiations, to be bargained for together. And obviously the Union would be strengthened in its bargaining for the wage increase if it were to receive a new wage assessment. But the two were nevertheless distinct issues. And the Union's procedure of lumping the two issues together into a single-package proposition denied its members their right to an uncoerced vote on each distinct issue. In ruling that this procedure infringed the rights guaranteed to union members by Section 101 of the LMRDA, the Court said in *Sertic, supra*, 423 F.2d at 520:

> "The voter thus was faced with a package proposition which presented a dilemma. He had no way to approve the negotiation of a wage increase without simultaneously approving the negotiation of the two per cent assessment against his wages. It was impossible for a voter to reject negotiation of the wage assessment, which would effect an increase in his dues, without also rejecting authorization for negotiation of a wage increase of at least $1.00 per hour."

The Court of Appeals for the Sixth Circuit therefore held that submission of the package proposition infringed the rights of members to a meaningful vote on the issue of the wage assessment, which right was guaranteed them by Section 101(a)(3) of the LMRDA, 29 U.S.C. Section 411 (a)(3). And compare: *Young* v. *Hayes*, 195 F.Supp. 911, at 915-916 (D.D.C. 1961), as to infringement by the same means of members' rights guaranteed by Section 101(a)(1) of the LMRDA, 29 U.S.C. Section 411(a)(1).

In the instant case, voters were presented with the same dilemma. They were required to vote "Yes" or "No" to a

single package proposition, embracing many and various constitutional amendments, one of which was a dues increase. One item in that package increased the dues of more than half the Union's members, increasing the dues of New York members, in particular, from $40 to $75 per quarter. Another item was a constitutional amendment "consolidating" all local unions of "offshore" (i.e., seagoing) members of this maritime union into a single "Offshore Division." Another constitutional amendment embraced within the package provided that the three International Officers, by reason of such office, should serve as the three top officers of each division, including the "Offshore Division." Still another gave the three International Officers half the weighted vote of the Offshore Division on the International's General Executive Board, thus effectively dominating it. And still another amendment substantially increased the officers' salaries.

The voter was not allowed to approve one of these amendments without simultaneously approving them all. He could not vote for the "consolidation" of offshore locals without also voting for the dues increase, the increase in officers' salaries, the augmentation of their powers, etc. It was impossible for the voter to reject the dues increase without also rejecting "consolidation" of locals and the augmentation of the International Officers' powers and salaries.

In short, the voter was given a coerced vote, not a free vote. His rights to vote in referendums of the Union, guaranteed him by Sections 101(a)(1) and 101(a)(3) of the LMRDA, were infringed and he was coerced in their exercise by the Union's device of lumping the amendments, including the dues increase, together in a single package and of requiring the members to vote upon the package as a whole.

In disposing of this problem, the Court of Appeals for the Second Circuit in the instant case (see page 8a of the

Appendix to the Union's petition for certiorari) recognized the principle enunciated by the Sixth Circuit in *Sertic, supra,* but failed either to decide in accordance with that principle or to find any substantial ground for distinguishing the instant case from *Sertic.*

The decision below creates a conflict between the Second Circuit and the Sixth on an issue of great importance to the protection of the rights of union members under the LMRDA. The conflict can be resolved only by, and should be resolved by, decision of this Court.

CONCLUSION

For the reason stated, this cross-petition for a writ of certiorari should be granted.

Respectfully submitted,

Burton H. Hall
401 Broadway
New York, New York 10013
Attorney for Cross-Petitioners

Order Petitioned From

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-eighth day of May, one thousand nine hundred and seventy-four.

Present: Hon. Henry J. Friendly
Hon. William H. Timbers
Circuit Judges
Hon. Roszel C. Thomsen
District Judge

Lloyd Sheldon, Victor Soto, James Clifford, Arthur Schnen and John Hayes, each of them individually and on behalf of all other members of International Organization of Masters, Mates and Pilots, AFL-CIO, similarly situated,

Plaintiffs-Appellants,

v.

Thomas F. O'Callaghan, as President, or Charles M. Crooks, as Secretary-Treasurer, or William M. Caldwell, as Vice President, of International Organization of Masters, Mates and Pilots, AFL-CIO,

Defendants-Appellees.

73-1744

Appeal from the United States District Court for the Southern District of New York.

Order Petitioned From.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order and judgment of said District Court be and they hereby are reversed and that the action be and it hereby is remanded to said District Court for further proceedings in accordance with the opinion of this court with costs to be taxed against the appellees.

A. Daniel Fusaro
Clerk

By Vincent A. Carlin
Chief Deputy Clerk

Order Denying Petition for Rehearing.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the sixth day of August, one thousand nine hundred and seventy-four.

Present: HON. HENRY J. FRIENDLY
HON. WILLIAM H. TIMBERS,
Circuit Judges
HON. ROSZEL C. THOMSEN,
District Judge

Docket No. 73-1744

LLOYD SHELDON, VICTOR SOTO, JAMES CLIFFORD, ARTHUR SCHNEN and JOHN HAYES, each of them individually and on behalf of all members of INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, AFL-CIO,

Plaintiffs-Appellants,

v.

THOMAS F. O'CALLAGHAN, as President, or CHARLES M. CROOKS, as Secretary-Treasurer, or WILLIAM M. CALDWELL, as Vice President, of INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, AFL-CIO,

Defendants-Appellees.

A petition for a rehearing having been filed herein by counsel for the appellee

Order Denying Petition for Rehearing.

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. DANIEL FUSARO
A. DANIEL FUSARO
Clerk

s/ VINCENT A. CARLIN
Chief Deputy Clerk